BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

SUSAN RAE CHRISTIANSEN	)	
Claimant	)	
	)	
VS.	)	
	)	
FUTURES UNLIMITED, INC.	)	
Respondent	)	Docket No. 244,147
	)	
AND	)	
	)	
HANOVER INSURANCE COMPANY	)	
Insurance Carrier	)	

ORDER

Respondent and its insurance carrier (respondent) requested review of the February 18, 2005 Award by Administrative Law Judge (ALJ) Nelsonna Potts Barnes. The Board heard oral argument on June 29, 2005.

APPEARANCES

Orvel B. Mason, of Arkansas City, Kansas, appeared for the claimant. Douglas C. Hobbs, of Wichita, Kansas, appeared for respondent.

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award. In addition, at oral argument the parties agreed that the ALJ's Award for a 9.5 percent functional impairment to the whole body for claimant's sternoclavicular injury as a result of her October 8, 1997 work-related injury is appropriate and no longer at issue. The parties also agreed that claimant is presently permanently and totally disabled.

ISSUES

The ALJ found claimant to be permanently and totally disabled as a result of her October 8, 1997 work-related accident. And in addition to permanent total disability benefits, the ALJ ordered respondent to pay claimant's outstanding medical expenses and

mileage as authorized expenses. The ALJ also directed respondent to provide future medical benefits for treatment necessary to cure and relieve the effects of claimant's injury.

The respondent requests review of the nature and extent of claimant's disability. Respondent's sole argument is that claimant's present status as permanently and totally disabled is not causally related to her work-related accident. Rather, respondent contends claimant has a significant pre-existing history of health, social and family related problems that caused the emotional and psychological problems which have plagued claimant in the years since her October 8, 1997 accident. Moreover, respondent argues claimant failed to establish that the drug prescribed by the treating physician, Procardia, was the cause of her apparent vasculitis or any of the other autoimmune or psychological problems that have developed since her compensable accident. Respondent contends it is responsible for only the 9.5 percent whole body impairment assessed by the ALJ and any future medical expenses associated with claimant's sternoclavicular injury. Thus, respondent believes the ALJ's Award should be significantly modified.

Claimant argues the ALJ's Award should be affirmed in all respects. Claimant contends that she was injured in a compensable event on October 8, 1997. While being treated for those injuries, she was prescribed Procardia, a drug which triggered an immune disorder and led to a cascade of other health problems, all of which she attributes to the underlying accident. Moreover, claimant contends that she is suffering from post traumatic stress disorder (PTSD) as a result of her accident and the subsequent medical treatment and resulting complications. The result of her ongoing physical and psychological problems have led directly to her inability to engage in any substantial gainful employment and she is, therefore, permanently and totally disabled.

The issues to be addressed are 1) whether claimant's present status as permanently and totally disabled is causally connected to her October 8, 1997 accident; and 2) whether and to what extent respondent is responsible for claimant's past and future medical expenses.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board finds the ALJ's Award should be affirmed.

The ALJ succinctly set forth a complete statement of facts pertinent to this case and the Board adopts that statement as its own. In addition, both parties concede that the ALJ's 9.5 percent whole body functional impairment for claimant's sternoclavicular functional impairment was appropriate and that she is presently permanently and totally disabled. Rather, the heart of the parties' dispute stems from the post-injury physiological and psychological problems she has experienced and whether those problems, which have

led to her present inability to engage in any substantial gainful employment, are causally related to her October 8, 1997 accident.

At the heart of this argument is claimant's admitted pre-existing psychological problems as well as the fact that after her October 8, 1997 accident, she was prescribed the drug Procardia. Claimant apparently began taking the drug in May 1998 and by July 5, 1998, claimant was suffering from a rash on her lower extremities, was feeling weak and dizzy and suffering from chest pains and fevers. These symptoms prompted claimant to seek emergency treatment at the local emergency room. Claimant, through her medical experts, believes this drug caused this condition which was diagnosed as vasculitis, and in turn, triggered an immune disorder. That adverse drug reaction, along with the events surrounding the accident itself, led to PTSD and major depression, along with a number of other health issues.

While the ALJ did not specifically so state, it is clear from her Award that she concluded that the events occurring after claimant took Procardia, a drug prescribed by Dr. J. Stanley Jones sometime in May 1998, including the emergency room visit on July 5, 1998, were compensable and flowed from her underlying accident. Obviously, the ALJ was following the well established legal principle that any injury resulting from medical treatment the claimant is receiving for a work-related accident is compensable.[1]

It is the claimant's burden of proof to establish her right to an award of compensation and to prove those conditions on which the claimant's right depends.[2] The evidence bearing on this issue is not unanimous.

Dr. Jones, the physician who prescribed the drug, indicated in his chart notes that claimant "cannot take the Procardia. It produced a vasculitis."[3] Dr. Jones did not testify or give any indication how it is that he came to this conclusion. In fact, no biopsy was done on the condition in claimant's lower extremities so the diagnosis of vasculitis was not confirmed.

After her presentation to the emergency room in July 1998, Dr. Jones referred claimant to Dr. James D. Anderson, a rheumatologist, for treatment of what he had concluded was vasculitis. At that point, claimant's condition had stabilized somewhat and

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[1] *Roberts v. Krupka*, 246 Kan. 433, 790 P.2d 422 (1990).

[2] *Hughes v. Inland Container Corp.*, 247 Kan. 407, 799 P.2d 1011 (1990).

[3] Stipulation (Jun. 16, 2003) at 7. (Dr. Jones' medical records entered into evidence by stipulation). Vasculitis is an inflammation of the blood vessels.

Dr. Anderson was not able to perform a biopsy. Rather, he relied on Dr. Jones' diagnosis because, in his experience, Dr. Jones was a reliable diagnostician.[4]

Dr. Anderson ran a series of tests in an attempt to isolate claimant's problem and to rule out lupus, rheumatoid arthritis and hepatitis B and/or C.[5] According to Dr. Anderson, claimant's test results indicated she was suffering from an immune dysfunction, meaning that her immune system is attacking normal tissue. In addition, her C reactive protein was elevated, a finding that is suggestive of vasculitis.[6] He ultimately diagnosed fibromyalgia and an undifferentiated immune disorder, which he attributed to a reaction to nifedipine, the active ingredient in Procardia.

When asked about the connection between Procardia and claimant's ongoing immune disorder, Dr. Anderson indicated that the chronological connection between the two "made sense".[7] Dr. Anderson went on to testify that once claimant came to him, he did some research and was able to find some articles that suggest nifedipine can aggravate a patient's immune system. Dr. Anderson was initially unable to specifically reference the articles he had found as he had apparently sent them to Dr. Jones. When presented with at least one article, Dr. Anderson conceded that the anecdotal evidence contained in those articles involved patients with precipitating injuries that were different from the one involved in claimant's October 8, 1997 accident. Ultimately, Dr. Anderson remained steadfast in his opinion that "Procardia precipitated something that led to lots of medical care and lots of tests and treatment."[8]

In contrast, respondent offered the testimony of Dr. Chris Fevurly, who examined claimant on one occasion, on September 11, 2003. Following his examination, Dr. Fevurly concluded that while claimant may have suffered contusions and sprains from the October 8, 1997 accident, her major disabling feature was her advanced chronic obstructive pulmonary disease (COPD).[9] He concluded claimant was suffering not only from COPD but chronic pain syndrome with generalized pain.

Dr. Fevurly testified that what he observed in claimant's lower extremities during the course of his 2003 examination was not vasculitis, but conceded claimant may have had

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[4] Anderson Depo. at 8.

[5] *Id.* at 10-11.

[6] *Id.* at 15.

[7] *Id.* at 6-7.

[8] James D. Anderson, M.D. Depo. at 57.

[9] Fevurly Depo at 13. Claimant was diagnosed with COPD in 2000 and there is no allegation that this condition was caused by her October 8, 1997 accident.

it back in 1998. He further testified that in order to confirm that claimant did, in fact, have vasculitis, it should have been biopsied by Dr. Jones. Because it was not, he maintains it is impossible to say that claimant had vasculitis.

Moreover, he indicated he was not aware of any studies to prove a connection between Procardia and cutaneous vasculitis, although there is some anecdotal evidence.[10] While Dr. Fevurly seemed to agree that if there is a reaction and if that reaction triggers an autoimmune response, he believed when the drug is stopped, the reaction stops.[11] Dr. Fevurly suggested that while a drug can cause permanent damage, it depends on how long the drug was taken.[12] He also pointed out that claimant had seen her personal physician 2 months before her accident and was complaining of joint related complaints.[13] According to the record, claimant had a bug bite and was treated for lyme disease. Thus, he concluded claimant probably had an "inherent autoimmune disorder" and that Procardia played no part in its eventual surfacing.[14]

In this instance, while it is clear that claimant did not do well on the Procardia, Dr. Fevurly found it unlikely that she suffered any permanent effects from the drug. According to Dr. Fevurly, claimant's condition was already compromised. And while her lungs have deteriorated in the years since she took Procardia, he maintains that is due to the COPD and the fact that she has chronic bronchitis, asthma, smokes cigarettes and had TB, which required the surgical removal of a lung lobe years ago. He further testified that she had no aggravation, acceleration or intensification of her condition due to the Procardia.[15]

After careful consideration of the medical evidence, the Board finds that claimant has met her burden of proving that Procardia was the triggering event which led to significant subsequent physical problems including the immune dysfunction. While there is obviously a dispute among the medical practitioners who testified in this case, the Board is persuaded by the testimony of Dr. James Anderson, a rheumatologist, that claimant's ingestion of Procardia led to her emergency room visit on July 5, 1998, and her subsequent and ongoing problems with cutaneous vasculitis in her lower extremities. Likewise, the Board is persuaded by the medical testimony contained within the record that her long term

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[10] Although not expressly stated, it appears that Dr. Fevurly is referring to the same sorts of articles that Dr. James D. Anderson found. Unlike Dr. Anderson, Dr. Fevurly thought these were not persuasive.

[11] Fevurly Depo. at 17.

[12] *Id.* at.

[13] *Id.* at 50.

[14] *Id.* at 50.

[15] *Id.* at 19.

use of Prednisone to control the vasculitis has aggravated her pain disorder, the weakness of her muscles, her obesity and accelerated the onset of diabetes.[16]

Unfortunately for claimant, that is not the extent of her ongoing problems. She also attributes her present psychiatric problems, which include a diagnosis of major depression and PTSD. In fact, there is no dispute that claimant has major depression and PTSD. The dispute stems from the source of these conditions.

In support of her contention, claimant offered the testimony of Dr. Robert Bean, a psychologist, and Dr. Kevin B. Holloway, a psychiatrist, both of whom have treated claimant. Dr. Bean testified that claimant is incapable of working because her illness, resulting in the pain, PTSD, depression and anxiety disorder, interferes with her ability to function.[17] He attributed her psychiatric problems to the October 8, 1997 event as well as those that followed. In other words, it is not the fact that the box was thrown at her causing her to fall that caused the PTSD. It was the fact that the person who threw the box then continued to cause her to feel threatened by going after her until he was restrained, as well as the whole picture of events flowing thereafter.[18]

Similarly, Dr. Holloway testified that he believes the October 8, 1997 accident and the subsequent events cause claimant's present psychiatric issues,[19] although he acknowledges that in such matters, there is never any certainty, nor any good definitive tests which conclusively establish a link between an event and person's psychiatric condition.[20] He went on to explain that psychiatrically, physicians must work from symptom clusters and certain criteria when making diagnoses. For example, in the case of a major depressive diagnosis, which claimant has, one must have 5 of the 9 criteria, and they must exist for a certain duration. In claimant's case, she consistently demonstrated 8 of the 9 criteria following her accident for a major depressive diagnosis.

Both Drs. Holloway and Bean acknowledge that the October 8, 1997 accident is not the only event in claimant's life that might give rise to depression or PTSD. By all accounts, claimant has had a difficult life. It is undisputed that claimant's two children were raped by an uncle and his son. When that event came to light in the 1980's, claimant sought treatment and was voluntarily admitted to a facility for a period of weeks. Since that time, she has remained productive, working at various jobs including working for this

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[16] *Id.* at 57-60.

[17] Bean Depo. at 41.

[18] *Id.* at 49.

[19] Holloway Depo. at 15.

[20] *Id.* at 15.

respondent for a period of time. She apparently required no medication or ongoing treatment for that event.

While working, she even had several encounters with individuals in the work place that involved violence, one with an Alzheimer's patient who stabbed her with a fork, and another with two unruly students who attempted to choke her with a purse strap as retribution for her taking them to be drug tested. In neither of these events did she seek treatment for psychiatric issues. Dr. Holloway explains that claimant was vulnerable to PTSD given her background and that it is her perception of fear at the hands of the individual who threw the box at her on October 8, 1997 that caused that event to become so significant to her.[21]

Respondent retained Dr. Mitchel A. Woltersdorf, a neuropsychologist, to evaluate claimant in 2001. He performed a variety of tests, including the MMPI-II and the MCMI-III, and conducted an interview. According to Dr. Woltersdorf, the test results suggested claimant was malingering. He explained that the first half of the MMPI was valid, but when compared to the second half of the test, claimant's test taking approach changed. Claimant suggests this was because the testing environment was tainted and caused her to be distracted, but Dr. Woltersdorf discounts this explanation.

Independent of the testing, Dr. Woltersdorf testified that while claimant clearly has PTSD, the October 8, 1997 accident could not be the precipitating event for that condition. Simply put, claimant is able to recite the event with clarity and without any emotional difficulty, other than anger and frustration. Yet, when she is asked to recount the events surrounding the rape of her two daughters, she is unable to speak. Thus, he concluded that because the accident fails to illicit the appropriate response, there is no need to conduct further evaluation. In other words, because the event of October 8, 1997 was not significant enough, it is irrelevant if the balance of the criteria are met. The event could not be the precipitating factor for her present PTSD. To him, it is the absence of symptoms while talking about the October 8, 1997 accident that is more important than the presence of symptoms while talking about the rape of her children.[22] In sum, the box incident was not serious enough to cause her depression.

Dr. Woltersdorf agrees that claimant has a number of stressors in her life, but that her depression and *chronic* PTSD predated the accident at issue in this case. Thus, he assessed her no permanency as a result of her psychiatric condition, as it relates to the October 8, 1997 accident.

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[21] *Id.* at 24.

[22] Woltersdorf Depo. at 23.

It is well settled in this state that an accidental injury is compensable even where the accident only serves to aggravate or accelerate an existing disease or intensifies the affliction.[23] The test is not whether the job-related activity or injury caused the condition but whether the job-related activity or injury aggravated or accelerated the condition.[24] This would be true even with psychiatric injuries, which are compensable if they are directly traceable to the work-related injury.[25]

The ALJ concluded that the testimony of Dr. Holloway, Dr. Bean and the medical records of Dr. Moeller were persuasive when weighed against that of Dr. Woltersdorf. The Board agrees and affirms this finding. Claimant's physical injury and her subsequent treatment, including an adverse reaction to Procardia which triggered an underlying autoimmune disorder aggravated or exacerbated claimant's underlying psychological condition. Thus, the Board affirms the ALJ's finding that claimant's permanent and total disability under K.S.A. 44-510c(a)(2) is work-related.

The Board also affirms the ALJ's findings with respect to claimant's medical bills and the mileage reflected in the exhibits attached to the Regular Hearing transcript. Those bills are to be considered authorized and should be paid, subject to the fee schedule.

All other findings and conclusions contained within the ALJ's Award are hereby affirmed.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Nelsonna Potts Barnes dated February 18, 2005, is affirmed.

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[23] *Harris v. Cessna Aircraft Co.*, 9 Kan. App. 2d 334, 678 P.2d 178 (1984)*; Demars v. Rickel Manufacturing Corporation*, 223 Kan. 374, 573 P.2d 1036 (1978); *Chinn v. Gay & Taylor, Inc.*, 219 Kan. 196, 547 P.2d 751 (1976).

[24] *Hanson v. Logan U.S.D. 326*, 28 Kan. App. 2d 92, 11 P.3d 1184, *rev. denied* 270 Kan. 898 (2001); *Woodward v. Beech Aircraft Corp.*, 24 Kan. App.2d 510, 949 P.2d 1149 (1997).

[25] See *Love v. McDonald's Restaurant*, 13 Kan. App.2d 397, 77 P.2d 577, *rev. denied* (1989).

IT IS SO ORDERED.

Dated this _____ day of July, 2005.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Orvel B. Mason, Attorney for Claimant
Douglas C. Hobbs, Attorney for Respondent and its Insurance Carrier
Nelsonna Potts Barnes, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director